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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,354	08/06/2003	Michael Paul Ziaylek	ZIA- 186	8871

7590 10/26/2004
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EXAMINER

SCHULTERBRANDT, KOFI A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,354

Applicant(s)

ZIAYLEK ET AL.

Examiner

Kofi A. Schulerbrandt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-26 is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-21 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This second Office Action is in response to Applicant's Amendment received in the Office on August 9, 2004 in this case.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziaylek, Jr. et al. (Des. 394,381), in view of Kramer (3,317,171). Ziaylek et al. teach, substantially, each feature of the claimed invention as shown below. Ziaylek et al. does not teach the claimed ejection means. Kramer, however, with the same type of cylinder holding mechanism teaches the claimed erection means (12). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Ziaylek et al. to include Kramer's ejection means in order to increase the stability of the tank as it is being held in Ziaylek et al.'s holder. Regarding claim 18, it would also be obvious to place Kramer's ejection means in various vertical positions along the plate including below the upper clamping member as various positions would work satisfactorily to stabilize the tank (especially toward the middle of the tank).

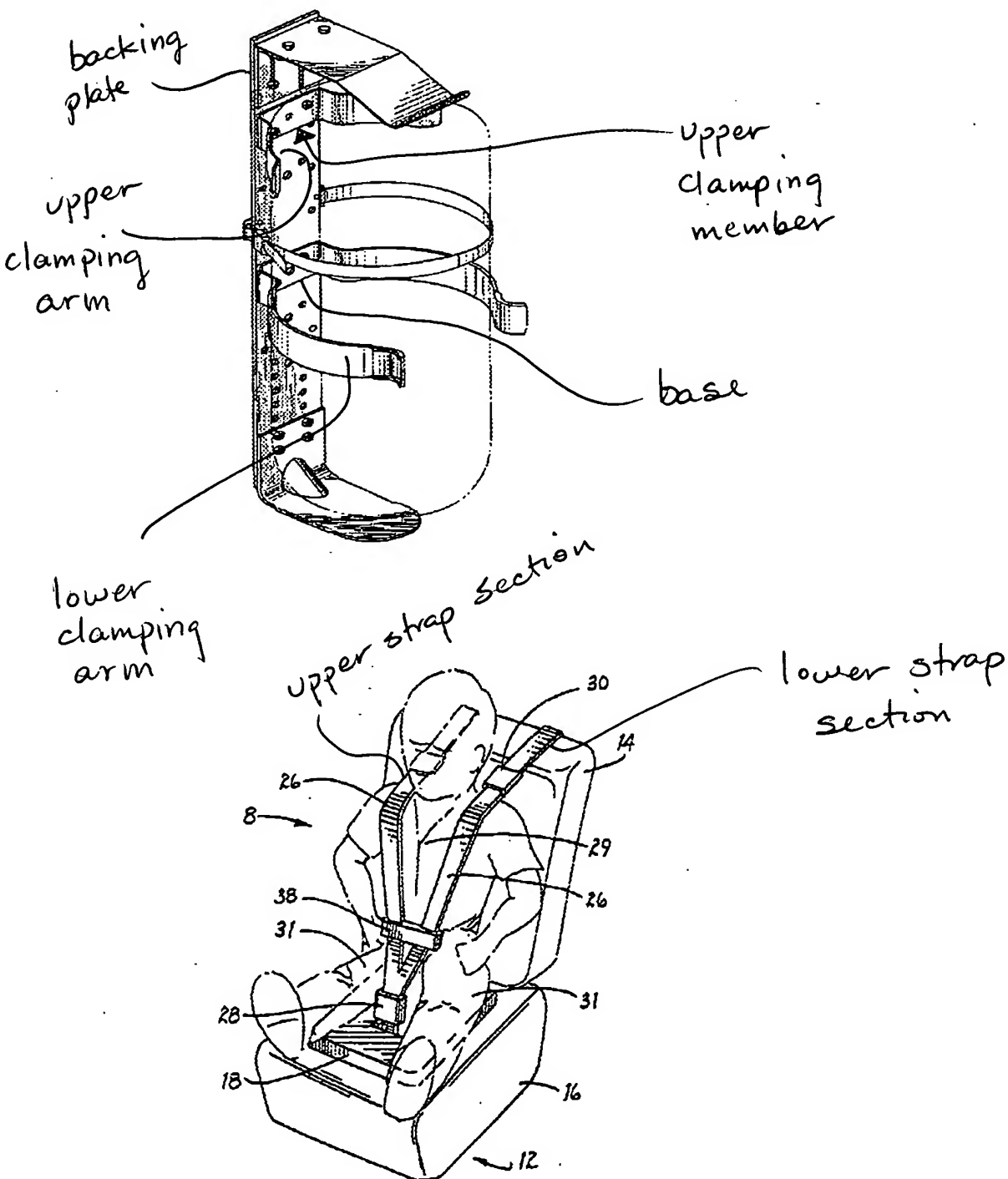
Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ziaylek, Jr. et al. (Des. 394,381), in view of Kramer (3,317,171) and Lingenfelser (4,213,592).

Ziylek et al. teach, substantially, each feature of the claimed invention as shown below. Ziylek et al. does not teach the claimed ejection means or a protective coating on the upper and lower clamping means. Kramer, however, with the same type of cylinder holding mechanism teaches the claimed erection means (12) and Langenfelser teaches a protective coating (17). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Ziylek et al. to include Kramer's ejection means in order to increase the stability of the tank as it is being held in Ziylek et al.'s holder. Furthermore, it would have been obvious to have modified Ziaylek Jr. et al. to include a protective coating on the arm means to protect the tank when contacting the arms.

Claims 16, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziaylek, Jr. et al. (Des. 394,381), in view of Kramer (3,317,171) and Kubeck (5,299,855). Ziylek et al. teach, substantially, each feature of the claimed invention as shown below. Ziylek et al. does not teach the claimed ejection means or the claimed strap arrangement. Kramer, however, with the same type of cylinder holding mechanism teaches the claimed erection means (12) and Zubeck teaches the upper and lower straps (26) with clasping means (28). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Ziylek et al. to include Kramer's ejection means in order to increase the stability of the tank as it is being held in Ziylek et al.'s holder. Furthermore, it would have been obvious to have modified Ziaylek Jr. et al. to be secured by Zubeck's equivalent clasps in a horizontal direction as taught by Ziaylek Jr. et al. as a number strap and clasp styles may be used to secure Ziylek et al.'s tank. In addition, it would be obvious to secure Zubeck's s strap ends at

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various locations along the plate as a number of location including the claimed locations would work satisfactorily to secure the tank.



Allowable Subject Matter

Claims 22 -26 are allowed over the prior art of record.

Claims 15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Reasons for Indicating Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claims 15, 22-26, the prior art of record does not teach a lower shelf member extending outwardly from the backing plate member at an angle with respect to the backing plate of greater than 90 degrees to facilitate passive ejection of the cylindrical tank member from the tank storage zone means unless restrained therein.

Examiner's Response to Applicant's Arguments

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The rejections of the above claims are all 35 U.S.C. 103(a) reference combination rejections. Applicant argues Kramer '171 and Playfair '136 individually. Applicant however never argues their combination with Ziaylek, Jr. et al. '381 on which the rejections are based on. In the above rejections Ziaylek Jr. et al. teach most of the claimed features. Kramer '171 and Playfair '136 are merely cited for the specific features (discussed above in the rejection) that Ziaylek, Jr. et al. fails to teach.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kofi A. Schulterbrandt whose telephone number is (703) 306-0096. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kofi Schulterbrandt
October 20, 2004



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER